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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

CC Docket No. 94-54

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In the Matter of)
)
Interconnection and Resale Obligations)
Pertaining to)
Commercial Mobile Radio Services)

To: The Commission

REPLY COMMENTS OF
THE ALLIANCE OF INDEPENDENT WIRELESS OPERATORS

The Alliance of Independent Wireless Operators ("AIW"),¹ by its attorney and pursuant to Sections 1.415 and 1.419 of the Commission's Rules, hereby submits its reply comments in response to the Commission's *Second Report and Order and Third Notice of Proposed Rulemaking* ("*Second Report and Notice*") in the above-captioned proceeding.²

AIW submits that if the Commission ignores the transparently anticompetitive arguments made by large carriers in this proceeding and instead focuses on the two critical issues which drive whether action is necessary, it will conclude that a safeguard mandating automatic roaming on request must be implemented to insure genuine competition. The core issues in this proceeding are, (1) whether a telecommunications carrier should have the right to interconnect its network to another telecommunications carrier's network through the use of an automatic

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¹ A list of AIW members is attached hereto as Exhibit A.

² *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, 11 FCC Rcd 9462 (1996).

roaming agreement on terms and conditions that are just and reasonable; and (2) whether end users should be provided the most efficient means of accessing technically compatible networks across the country.

I. A REQUESTING CARRIER MUST BE ENTITLED TO INTERCONNECT ITS NETWORK TO OTHER CARRIERS' NETWORKS

A. Extending Interconnection Rights To All Telecommunications Carriers Is Procompetitive.

A carrier's right to interconnect its network with another carrier is at the heart of the Commission's regulatory policy governing communications common carriers.³ LECs are required under the Communications Act to permit telecommunications carriers to interconnect their networks at technically feasible points on terms and conditions that are just and reasonable.⁴ Extending interconnection rights to CMRS roaming agreements would be procompetitive in that it would prevent carriers from denying customers of neighboring carriers and potential competitors from having access to their systems.

It is somewhat ironic that carriers that argued so vociferously in favor of opening up the local exchange and exchange access marketplace by mandating interconnection argue the opposite

³ See, e.g., *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, (Second Report and Order)* ("Local Competition Order"), FCC No. 96-333, (released August 8, 1996) (appeal pending).

⁴ An appeal, the Eighth Circuit has focused its inquiry squarely on the Commission's authority over intrastate services and its authority to mandate pricing. There is no conceivable scenario pursuant to which the Eighth Circuit will overturn the Communications Act provisions mandating that LECs permit competing carriers to interconnect their networks.

when it comes to opening up their networks to competition in this proceeding.⁵ Not a single anti-automatic roaming commenter provided a concrete example of how a requirement that one carrier provide an automatic roaming agreement to a requesting carrier would thwart the Commission's well established goals of opening up competition and interconnecting networks throughout the nation. Permitting carriers to deny access is antithetical to the procompetitive policies which drove adoption of the 1996 Telecommunications Act and the *Local Competition Order*.

B. Stated Fears of Higher Roaming Prices Are Disingenuous.

Some commenters are quick to point out that an automatic roaming rule could promote higher roaming rates.⁶ The transparency of these arguments becomes apparent when examining the current state of roaming. To this day, many of the carriers claiming rates should be lowered (and therefore object to required automatic roaming) continue to foist artificially high rates on the public. For example, there are few long distance roaming partners more active than those in the Washington, DC and Chicago markets. Both markets are large, dense, and mature on the analog side. The incremental cost to a Chicago carrier to serve a Washington roamer is minimal - yet Chicago's B side carrier charges \$3.00 per day and \$.99 per minute. Meanwhile, a Chicago B side roamer pays \$3.00 per day and \$.85 per minute on the Washington B side.

⁵ See Comments of AT&T Wireless Services, Inc., pp. 4-6 and Comments of Sprint Spectrum, L.P., p. 4-6.

⁶ See Comments of AT&T Wireless Services, Inc., p.5 and Comments of Bellsouth, p.5.

The Commission has never made a formal pronouncement concerning the specific question whether a wireless carrier may charge different rates to roamers from different markets. In private negotiations, large carriers support such a proposition on the theory that roamers from distant markets are more expensive to serve, citing as an example, the increased potential for fraud.

With respect to carriers operating in major markets, such distinctions make no sense. For any carrier operating in or near a major city, the costs of fraud are disproportionately local in that registration fraud by home customers far exceeds fraud from distant roamers. Moreover, the population density and major commuting routes in and around large cities economically support the system, while roaming service is an adjunct. Metropolitan carriers seek to reduce their roaming rates with neighboring carriers in order to market a larger "home roaming" footprint, while keeping rates high for distant roamers.

On the other hand, small carriers operating in rural areas construct cell sites in remote locations which are only viable because there is sufficient roaming traffic to support them. It is almost axiomatic that in areas where resident population densities are often below ten people per square mile, higher roaming rates are needed to cover construction and operating costs. So called "home roaming" rates would not provide sufficient revenue to justify constructing and operating the site. Large carriers complain that customers are dismayed with high roaming charges, yet they provide little or no education advising that a roamer should expect to pay more for the

ability to complete a call in a remote desert region than in a major city.⁷ To those carriers who complain about rural rates, AIW members point out that it is easy to advocate "home" roaming rates in San Antonio, but hard to make a profit on them if you operate a cell site in the desert.

C. Commenters Raised No Valid Arguments Against A "Roam on Request" Rule.

Numerous carriers raised many other reasons why a "roam on request" rule is unworkable. None of the objections raised are valid. For example:

1. **Potential for increased fraud.**⁸ Carriers deal with fraud today through increasingly sophisticated detection mechanisms, including PIN codes and real time call tracking. Fully 97% of all roaming calls are currently placed via automatic arrangements - and no carrier has advocated abolishing it because of fraud. Obviously, AIW does not now object to a carrier temporarily restricting roaming privileges when a fraud problem is acute. Thus, this argument is largely a red herring. In any event, it is noteworthy that, if denying an automatic roaming agreement is such an effective way to fight fraud, current roaming agreements would be cancelled on a wide scale, and they are not. Potential fraud does not justify refusing to interconnect with another carrier.

2. **Overburden to the existing real time roamer system.**⁹ AIW's understands that EDS and other clearinghouse providers would only be too happy to step up capacity to handle the increased calling from additional roaming customers.

⁷ There is no longer any reason for a customer to be surprised by roamer charges. Carriers can easily educate customers to dial "*611" or a similar code to obtain roaming pricing information from the host carrier.

⁸ See Comments of Ameritech, p. 3 and Comments of Bellsouth, pp. 4-5.

⁹ See Comments of Cellular Telecommunications Industry Association, pp. 13-14.

3. **Expense associated with switch adjustments.**¹⁰ If a distant carrier requests an automatic roaming agreement, it must believe that there is sufficient traffic to justify the time and expense of implementing it. The increased traffic gives both parties valid incentive to implement necessary switch adjustments. Moreover, no party stated that it refuses cellular roaming agreements on this basis.

4. **Lessens a carrier's ability to differentiate its product.**¹¹ This is perhaps the most absurd of all arguments. To illustrate: A Pittsburgh carrier's ability to differentiate its product *with its own customers* is simply not affected by its provision of service to a roamer from Cleveland. Surely some carrier could devise a doomsday scenario, but the comments ring hollow and are eerily similar to pre 1996 Telecommunications Act arguments raised by RBOCs attempting to forestall competition. Additionally, this argument ignores the obvious benefit of providing roamers with additional choices.

5. **Requires carriers to deploy coverage to meet roamers needs.**¹² AIW has never taken the position that a carrier should be required to configure its system to meet a roamer's needs, or upgrade its software to permit cross-protocol roaming. For example, if a PCS carrier wishes to design its system to serve only hospitals and schools, but not roads, a foreign

¹⁰ See Comments of Bell Atlantic NYNEX Mobile, Inc., p.4.

¹¹ See Comments of Ameritech, pp. 2-3 and Comments of Airtouch Communications, Inc., p.3.

¹² See Comments of Personal Communications Industry Association, p.5.

carrier seeking to roam in that market will undoubtedly choose another roaming partner that better suits its customers' needs.

6. **Action now would be premature.**¹³ An ounce of prevention is worth a pound of cure. Discouraging anticompetitive conduct and promoting competitive markets is much simpler than adjudicating complaints, especially where the preventative measure is unintrusive. Waiting until "market failure" occurs will waste valuable Commission resources, entail enormous litigation costs, and most important, poorly serve a public which completely fails to understand why any roaming call should be so difficult to complete.

II. MANUAL ROAMING ONLY SURVIVES AS A TOOL TO FORESTALL COMPETITION.

A. No Commenter Makes Any Persuasive Argument In Favor of Manual Roaming.

One would think that commenters favoring a manual only roaming rule would extol its virtues. Quite to the contrary, their remarks are tepid at best. Even its proponents cannot explain why a customer should be required to go through a cumbersome preregistration process each time they enter a new market. Moreover, they have not offered any solutions to the problems outlined in AIW's comments, most importantly:

- * Limitations such as short battery life in portable cellular units make multiple preregistrations impractical, if not impossible, causing customers to choose more convenient access such as wireline facilities or pay phones.

¹³ See Comments of Bellsouth, pp. 2-3, Comments of Sprint Spectrum, L.P. pp. 2-4 and Comments of PrimeCo. Personal Communications, L.P., pp. 10-13.

- * Manual roaming arrangements waste innovative technological advancements. For example, a manual cellular roamer cannot take advantage of automatic call delivery and other IS-41 features available to automatic roamers.¹⁴
- * Manual roaming is inherently less safe than automatic roaming, as a customer is required to locate a credit card and read the numbers for validation, often while driving.
- * The potential for fraud generally is not reduced by credit card roaming, as stolen credit card numbers may be used to place manual roaming calls and the reading of credit card numbers on analog systems may be picked up by illegal radio scanners.

III. ULTIMATELY, THE PUBLIC PAYS FOR ANTICOMPETITIVE CONDUCT.

AIW members have experienced improper and anticompetitive conduct. Rather than negotiate rates in good faith, large carriers often threaten to cut off automatic roaming to small carriers, even to the detriment of their own customers, who at this stage have no automatic roaming alternative. They are shunted off to manual roaming black holes where it takes five minutes to complete a call that costs many times more than the roaming rates rejected by the large carrier. The motivation behind a carrier's refusal to enter into an automatic roaming agreement upon request, which agreement would inure to the carrier's long term economic interest, is suspect.

¹⁴ Once again, AIW does not suggest that carriers should be required to implement enhanced functions to accommodate roamers. The marketplace will determine customer demand for additional functionality. Rather it is the basic function of being able to conveniently complete a call which should be promoted.

As PCS carriers invade the market, competitors will inevitably seek ways to forestall competition and keep prices artificially high. All of these actions will cost consumers, who will have no recourse but to pay or be inconvenienced. Industry studies show that most wireless customers don't even understand the concept of roaming. Those that do are generally sophisticated users. In either event, manual roaming will either be avoided because of the cost, the inconvenience, or both. The only way to get either group of users to roam is to make access simple. The fact of the matter is that without automatic roaming there *is* no roaming.

By opening up networks, consumers benefit from increased competition and lower prices. If the Commission recognizes that many carriers have an incentive to forestall competition and provide no valid reason for not adopting a roam on request rule, it becomes clear that the rule is needed and will serve the public interest.

CONCLUSION

AIW seeks adoption of a simple rule: A wireless carrier may not refuse to permit other carriers to interconnect their networks to the wireless carrier through the provision of an automatic roaming agreement. This rule will advance all of the Commission's laudable goals of opening up competition and fostering the creation of a "network of networks" throughout the country.

Respectfully submitted,

ALLIANCE OF INDEPENDENT WIRELESS OPERATORS

By:



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November 22, 1996

Exhibit A

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CERTIFICATE OF SERVICE

I, Kimberly Verven, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this 22nd day of November, 1996, had hand delivered, a copy of the foregoing "REPLY COMMENTS OF THE ALLIANCE OF INDEPENDENT WIRELESS OPERATORS" to the following:

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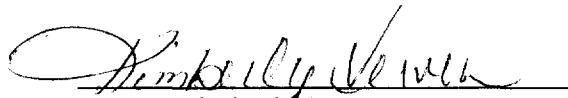
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